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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,990	11/04/2003	Marc K. Hellerstein	416272005200	6654
<div>20872 7590 08/02/2007 MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482</div>				
			EXAMINER GITOMER, RALPH J	
			ART UNIT 1657	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

The amendment received 7/20/07 and the IDS received 7/23/07 have been entered and claims 1-32, 34, 35, 37-43 are considered here.

The rejections of record under obviousness double patenting are hereby withdrawn in view of this application is the most senior of the three applications. In view of the arguments presented, the rejection of record under 35 USC 102(a) is hereby withdrawn. It is particularly noted that the Applicant argues Kurland determines labeled glucose whereas the present claims determine labeled water. However there is inconsistency regarding this issue in the claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-32, 34, 35, 37-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

There are many instances of lack of antecedent basis in the claims, in claim 1 line 1 "the metabolism, in claim 1(c) "the incorporation". In all occurrences "chosen from" is improper Markush terminology. In claim 1 nonstandard language is unclear where detecting is improper if something is determined and no correlating step is seen. In claim 1 labeled water is detected that has been produced from sugars or fatty acids administered. In claim 13 the labeled substance is incorporated into sugars, fatty acids, proteins or DNA and measured. This is inconsistent and fails to further limit claim 1.

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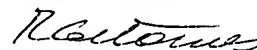
The claims must be clear regarding what is administered, what is determined and what is correlated. In claim 34 "said metabolism determination" lacks antecedent basis.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ralph Gitomer
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Art Unit 1657